



City of Canby

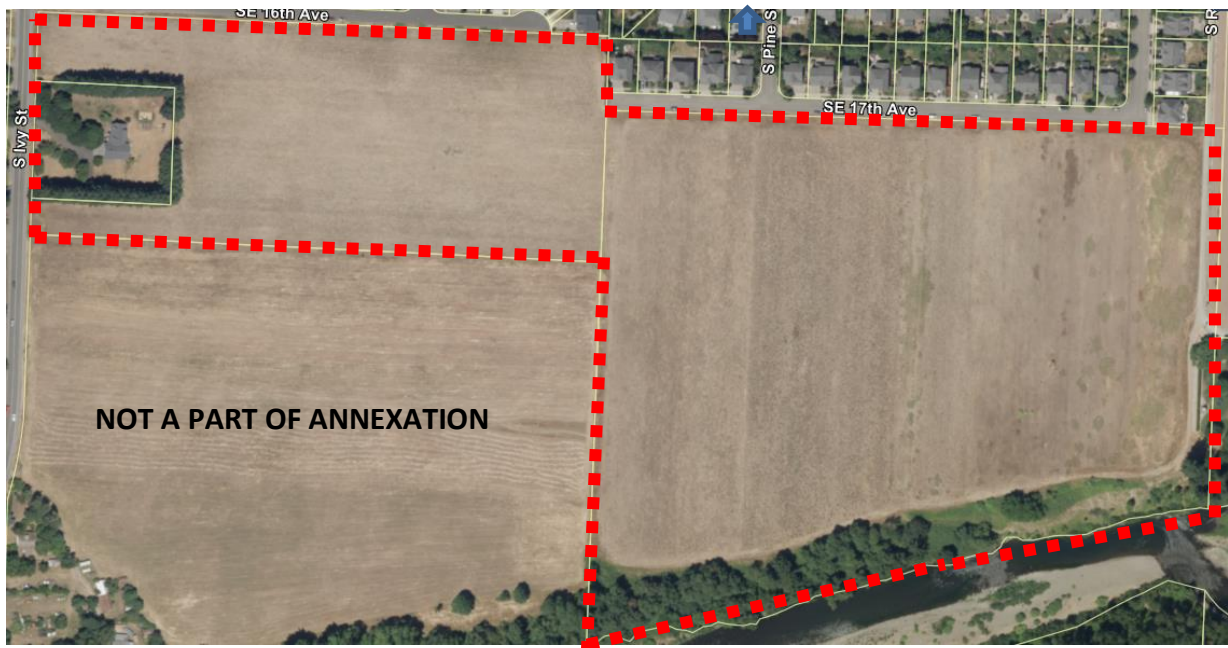
File #: ANN 21-01 / ZC 21-02

HEARING DATE: October 11, 2021
STAFF REPORT DATE: October 1, 2021
TO: Planning Commission
STAFF: Erik Forsell, AICP, Associate Planner

Applicant Request

The applicant request is to annex approximately 42.5 acres of land into the city limits of Canby. As part of the annexation request, the applicant is concurrently requesting the approval of a Development Concept Plan (DCP) and a zone change to establish zoning for the proposed annexation land that is consistent with the Canby Comprehensive Plan. **Figure 1** below is the approximate location of the proposed annexation area. A more precise legal description of the proposed annexation area is on **Figure 2** on the following page.

Figure 1 – Proposed Annexation Area



Note: Image and area not to scale

A TRACT OF LAND LOCATED IN THE SW 1/4 OF SEC. 3, THE NE 1/4 OF SEC. 4, AND THE SE 1/4 OF SEC. 4, T4S, R1E, W.M., CLACKAMAS COUNTY, OREGON

The map shows a large tract of land, shaded with diagonal lines, representing the Tofte Farms. The tract is bounded by SE 16th Ave to the north, SE 17th Ave to the east, and the West Line of SW 1/4 of Sec. 3 to the west. The area is divided into several smaller parcels, some of which are labeled with document numbers (DOC. NO.) and acreage. The map includes a north arrow, a scale bar (1" = 300 feet), and a registration stamp from the City of Canby, Oregon, dated 04/16/2021. The map also shows the Urban Growth Boundary (Bluff Above Molalla River) and the City Limits of Canby. The map is titled "TOFTE FARMS CITY OF CANBY ANNEXATION MAP" and is prepared by AKS Engineering & Forestry, LLC.

SE 16TH AVE

SE 17TH AVE

DOC. NO. 2005-040830

DOC. NO. 86-14359

DOC. NO. 2016-08178

DOC. NO. 2005-040830

POINT OF BEGINNING

SW CORNER OF "TOFTE FARMS NO. 4"

AREA: 42.5 ACRES±

N87°20'55"W 1257.94'

WEST LINE OF SW 1/4 OF SEC. 3

URBAN GROWTH BOUNDARY (BLUFF ABOVE MOLALLA RIVER)

MOLALLA RIVER

SE 16TH AVE

SE 17TH AVE

URBAN GROWTH BOUNDARY

CITY LIMITS

CITY OF CANBY CITY LIMITS

04/16/2021

REGISTERED PROFESSIONAL LAND SURVEYOR

OREGON

JANUARY 12, 2016

MICHAEL S. KALINA

89558PLS

RENEWS: 6/30/21

SCALE: 1" = 300 FEET

AKS ENGINEERING & FORESTRY, LLC

12965 SW HERMAN RD, STE 100

TUALATIN, OR 97062

503.563.6151

WWW.AKS-ENG.COM

TOFTE FARMS

CITY OF CANBY ANNEXATION MAP

EXHIBIT B

DRWN: MH

CHKD: MS

AKS JOB:

8659

Staff Recommendation

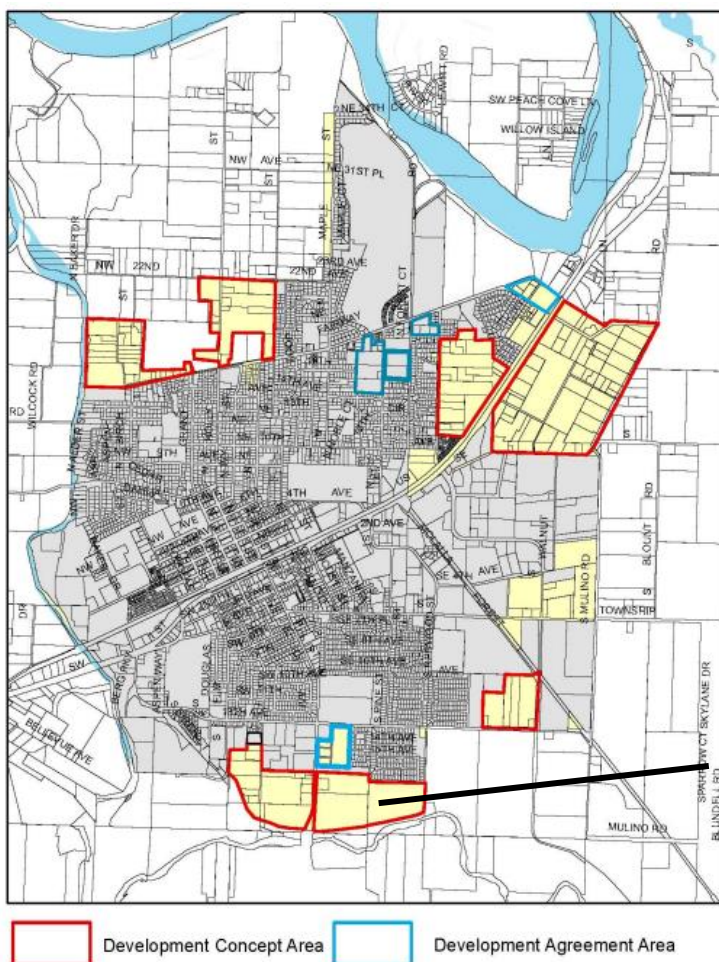
Based on the application submitted and the facts, findings, and conclusions of this report, staff recommend that the Planning Commission forward on a recommendation of **Approval** to the City Council pursuant to the Conditions of Approval presented in **Section VI** at the end of this report.

Project Overview

This development proposal is essentially three separate applications combined into one proposal: requests for annexation, development concept plan and a zone change.

The City of Canby's annexation ordinance requires either a Development Concept Plan (DCP) or a Development Agreement (DA) for most properties that are part of an annexation request. This particular property is designated on the City of Canby Annexation Development Map 16.84.040(A) as located within the Development Concept Plan area and is does not have an established and adopted DCP. The DCP addresses applicable criteria listed in Section 16.84.040 CMC as well as dedications, street construction, and utility design issues which the City desires to be guaranteed or reflected in any upcoming subdivision application. See **Figure 3** below for the DCP / DA map areas.

Figure 3 – City of Canby DCP / DA Areas



The annexation area is located within the City of Canby's Urban Growth Boundary. The City of Canby Comprehensive Plan has envisioned the ultimate urbanization of this area and its intended land use, and the Comprehensive Plan Map for these particular lots indicates a mixture of both medium and low density residential use designations.

In summary, the applicant is proposing a multi-layered process to execute the inclusion of the subject properties into the City of Canby corporate limits. The process starts with an annexation and development concept plan with a concurrent zone change from County Exclusive Farm Use (EFU) zone to City of Canby R-1 and R-1.5.

Subject Properties are within DCP Area for annexations

Property/Owner Information

Address	371 SE 13 th Avenue and 1712 S Ivy Street; other property have no situs (address)
Tax Lot(s)	41E04D01200 / 41E04D01300 / 41E0302300
Property Size	Approximately ~ 42.5 acres in combination
Comprehensive Plan	LDR Low Density Residential and MDR Medium Density Residential
Zoning	EFU (Clackamas County)
Owner	TL 1300 – Charles & Janet Braun / TLS 1200 and 2300 – Tofte Farms, LLC
Applicant	Pahlisch Homes
Agent	AKS Engineering & Forestry, LLC
Application Type	Annexation- Type IV / Zone Change – Type IV
City File Number(s)	ANN 21-01 and ZC 21-02

Exhibits of Record

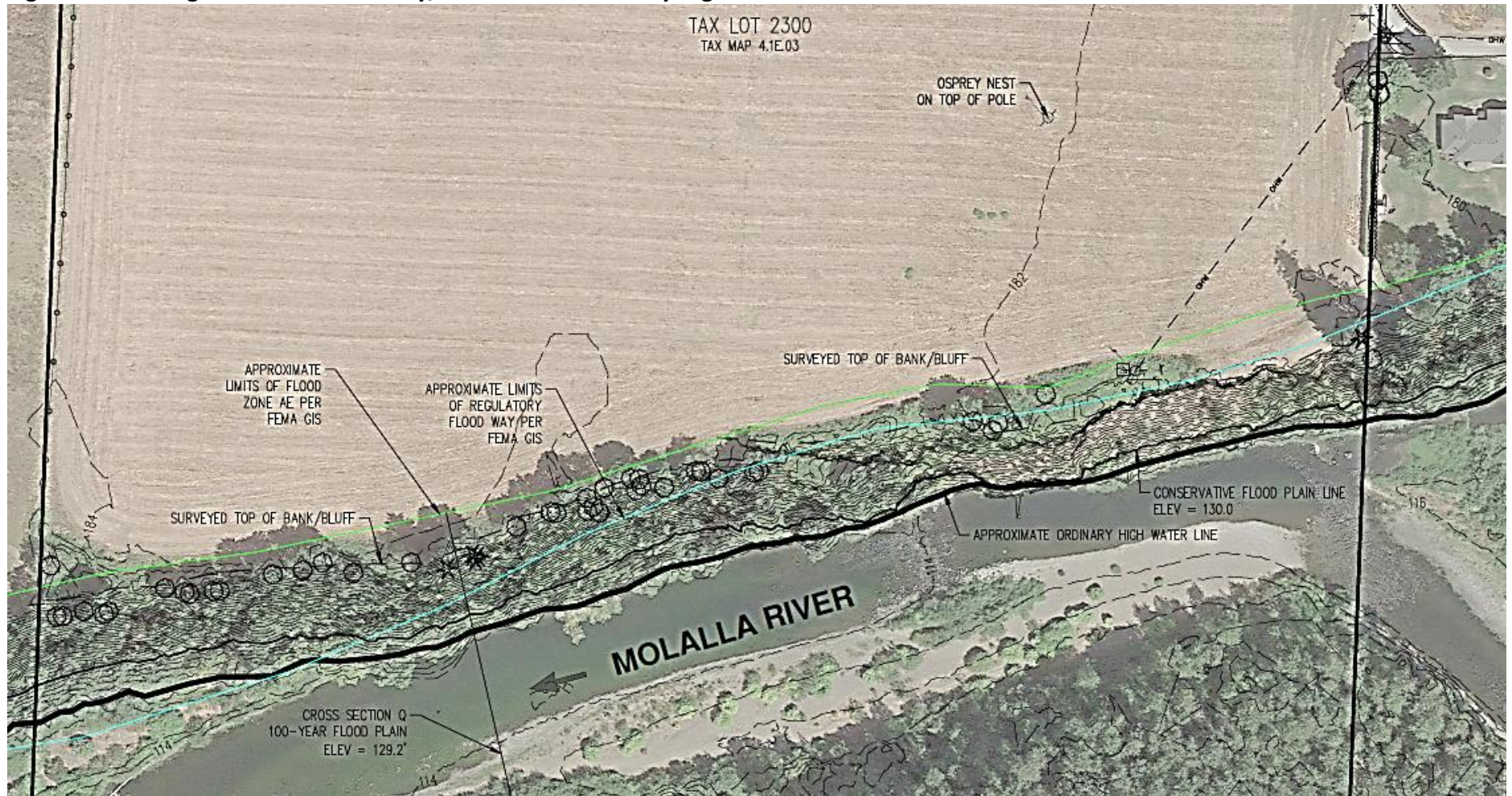
- A.** Land Use Application materials – Annexation/Zone Change, Type IV
- B.** Land Use Application materials – Development Concept Plan
 - 1. Development Concept Plan
 - 2. Conceptual Water Infrastructure Plan
 - 3. Conceptual Sewer Infrastructure Plan
 - 4. Conceptual Stormwater Infrastructure Plan
 - 5. Wetland Report
- C.** Survey and Legal Description of Property to be Annexed
- D.** Transportation Planning Rule (TPR) Memorandum
- E.** Pre-Application Conference Minutes
- F.** Neighborhood Meeting Notes
- G.** Public Comments
- H.** Agency Comments

I. Existing Conditions:

The subject property is generally located in the southern portion of the City, bordering the Mollala River and the Urban Growth Boundary to the south and S Ivy Street to the west. The proposed annexation area is a ±42.5 acre portion of three tax lots previously identified above. The annexation area is relatively flat with the exception of the interface with the Mollala River where a distinct bluff descends sharply into a riparian upland area and river body itself. The subject properties appear to have been in agricultural production for some time with the exception of TL 1300 which is developed with a single family dwelling and associated improvements.

The southern boundary of the Mollala contains areas of mapped flood hazard, possible wetlands, some steep slopes and riparian area. See **Figure 4 and 5** on the following pages for imagery of these areas.

Figure 4 – Existing Conditions Floodway/AE Zone and Ordinary High Water



1

1 Applicant supplied information

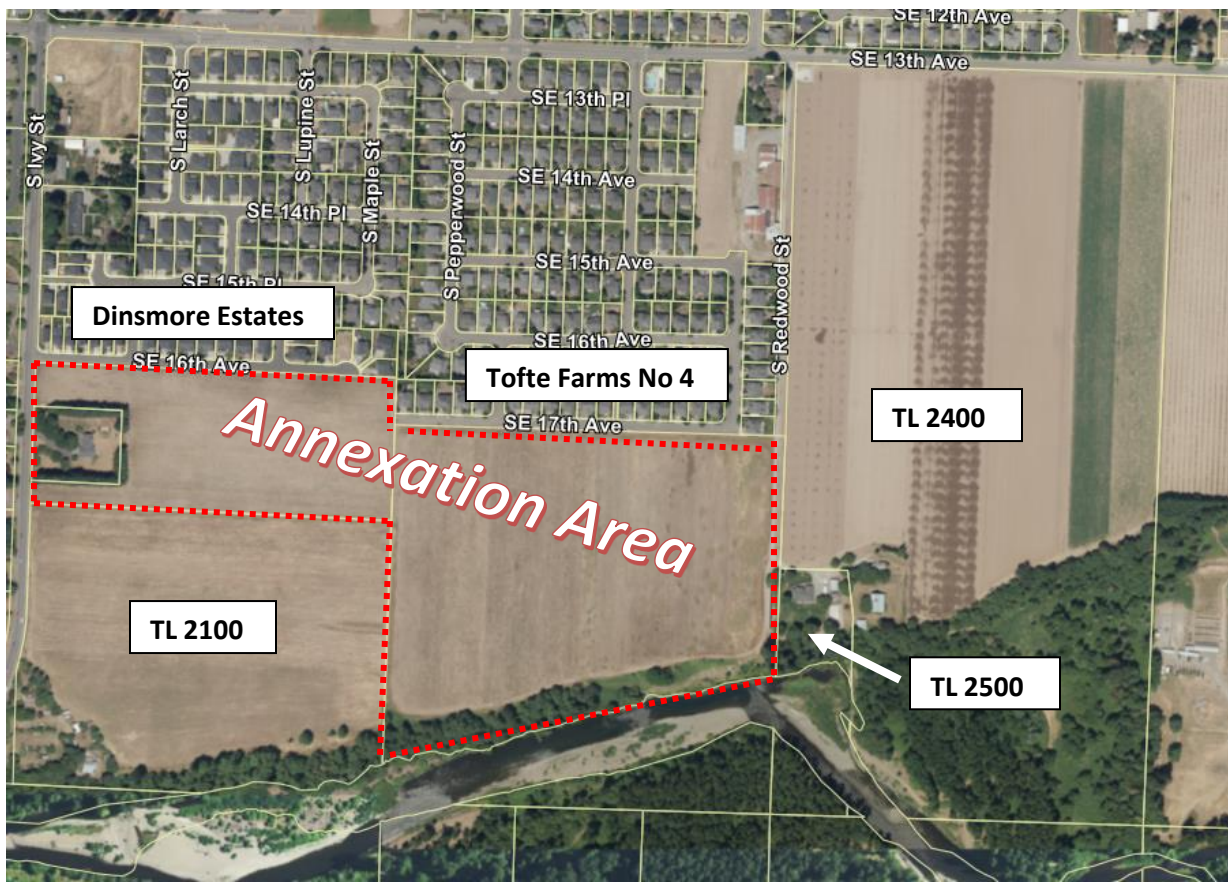
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2 Approximate GIS Mapping of Mapped Flood Hazard Areas

Figure 6 – Surrounding Land Uses:

<i>Direction</i>	<i>Zoning</i>	<i>Land Uses</i>
North	R-1 and R-1.5	Tofte Farms No 4 / Dinsmore Estates – Single Family Subdivision of mixed density
West	N/A	S Ivy Street
South	EFU and N/A	TL 2100 is unincorporated with low intensity single family home and associated accessory structures and uses. A portion of the site fronts the bluff which descends into the Mollala River.
East	EFU / RRFF-5	TLs 2400 and 2500 are unincorporated with low intensity single family home and associated accessory structures and uses.

Figure 6.1 – Surrounding Land Uses:



Utilities/Sewer/Disposal/Fire/Police:

- Water and electric service will be provided by Canby Utility.
- Wastewater, storm drainage, and streets are managed by the City of Canby Public Works.
- Disposal services are provided by Canby Disposal.
- Fire services are provided by Canby Fire District.
- Police services are provided by Canby Police Department.

Staff have provided conditions of approval at the end of this staff report (Section VII), written to ensure the necessary public infrastructure is constructed and installed in accordance with all applicable city, county, state, and federal requirements.

II. Approval Criteria:

In addition to components of the City of Canby Comprehensive Plan, applicable criteria used in evaluating (ANN 21-01/ZC 21-02) are listed in the following sections of the City of Canby's Land Development and Planning Ordinance:

- CMC 16.08 General Provisions
- CMC 16.16 R-1 Low Density Residential Zone
- CMC 16.18 R-1.5 Medium Density Residential Zone
- CMC 16.54 Amendments to Zoning Map
- CMC 16.84 Annexations
 - ORS 222.225 Annexations
- CMC 16.88 General Standards and Procedures
- CMC 16.89 Application and Review Procedures

III. Summary of Findings:

Canby Municipal Code (CMC) Section 16.08 – General Provisions

16.08.040 Zoning of annexed areas. Zoning of newly annexed areas shall be considered by the Planning Commission in its review and by the Council in conducting its public hearing for the annexation. (Ord. 740 section 10.3.05(D), 1984)(Ord. 1294, 2008)

Finding 1: The zoning shall be analyzed during the Planning Commission hearing and a final decision is ultimately made by the City Council. The applicant is proposing zoning consistent with the underlying Comprehensive Plan designation. Further discussion of the zoning is found later in this report.

16.08.070 Illegally created lots. In no case shall a lot which has been created in violation of state statute or city ordinance be considered as a lot of record for development purposes, until such violation has been legally remedied. (Ord. 740 section 10.3.05(G), 1984).

Finding 2: The applicant has supplied some deed history but does not make a claim as to whether the existing lots in their current configuration are legal lots. Staff have no indication to find these lots were illegally created. During a future subdivision process, the applicant will be required to demonstrate sufficiently to staff that the subject properties are legal lots of record.

16.08.150 Traffic Impact Study (TIS).

A. Purpose. The purpose of this section of the code is to implement Section 660-012- 0045(2)(b) of the State Transportation Planning Rule, which requires the city to adopt a process to apply conditions to development proposals in order to minimize adverse impacts to and protect transportation facilities. This section establishes the standards to determine when a proposal must be reviewed for potential traffic impacts; when a Traffic Impact Study must be submitted with a development application in order to determine whether conditions are needed to minimize impacts to and protect transportation facilities: what information must be included in a Traffic Impact Study; and who is

qualified to prepare the Study.

Finding 3: The applicant is required to meet the State Transportation Planning Rule (TPR) requirements for proposed changes in land use zoning. The requirements of Oregon Administrative Rule (OAR) 660-012-0060, the Transportation Planning Rule (TPR), must be met for proposed changes in land use zoning. The intent of the TPR (OAR 660-12-0060) is to ensure that future land use and traffic growth is consistent with transportation system planning and does not create a significant impact on the surrounding transportation system beyond currently allowed uses. The TPR allows a change in land use zoning in the event that a zone change would make the designation consistent with both the Comprehensive Plan and the Transportation System Plan. The allowance (found in Section 9) was added to the TPR in December 2011 and fits the circumstances of the project parcels.

The applicant contracted with DKS, a traffic engineering and planning firm, who reviewed the changes and found that the proposed zoning is consistent with the Canby's Comprehensive Plan and adopted Transportation System Plan. (Refer to **Exhibit D** for a copy of the DKS TPR Memorandum).

Staff finds the TPR memorandum satisfied the intent and purposes of analyzing a zone change and proposed annexation. Further analysis will be necessary for future development including any land divisions proposed by the applicant or others.

Canby Municipal Code (CMC) Section 16.16 R-1 – Low Density Residential Zone

Finding 4: The applicant is proposing to annex land and concurrently rezone the property consistent with the Comprehensive Plan designation. To the extent applicable, the new zoning has a variety of standards that apply to development and land divisions that will be proposed subsequent to this request for annexation. The amount of R-1 zoned land should this proposal be approximately ~ 39.5 acres refer to Figure 7 on the following page for an accounting of the acreage proposed for R-1 – Low Density Residential.

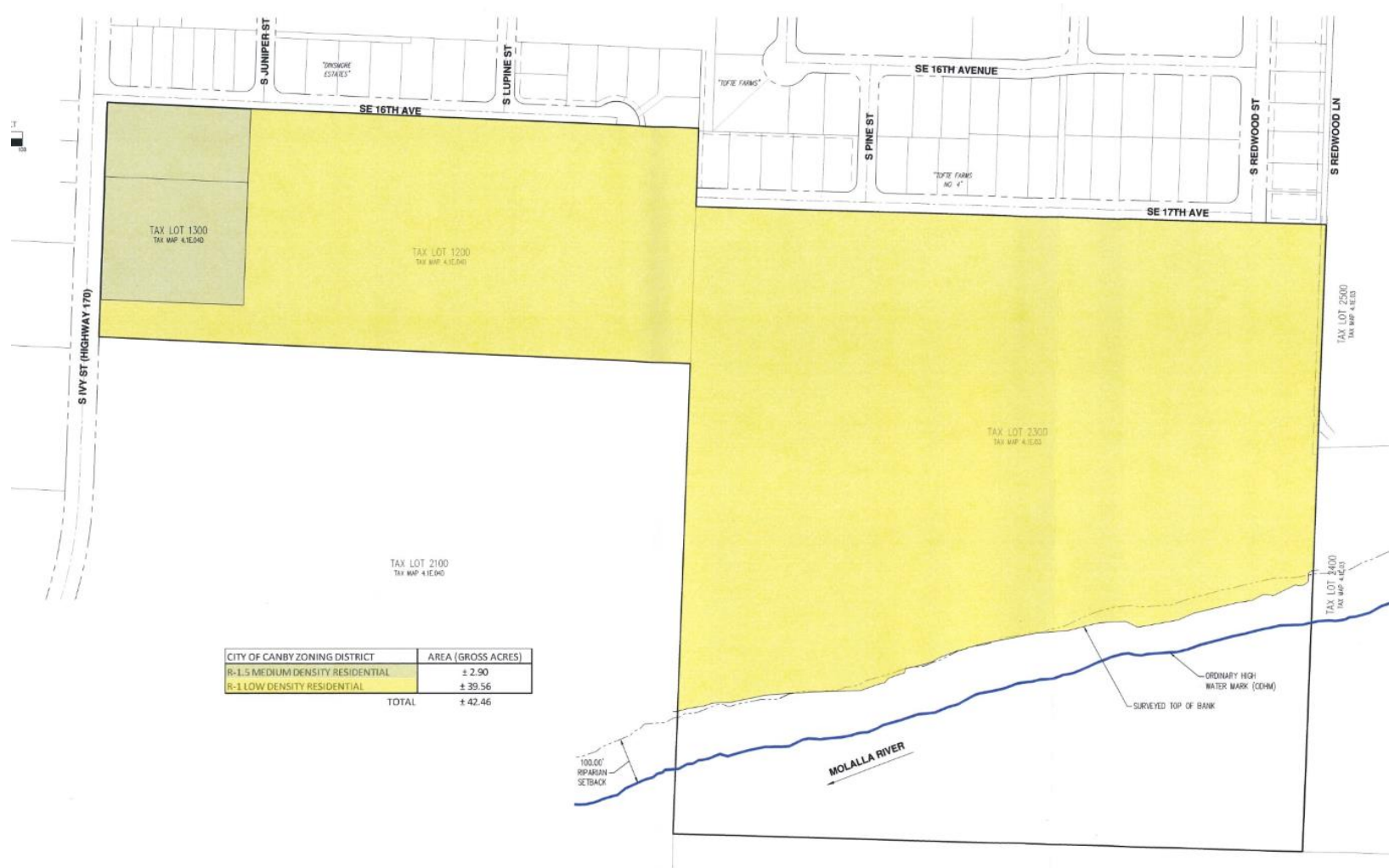
If this annexation zone change is approved, the properties will be subject to the standards found in CMC 16.16

Canby Municipal Code (CMC) Section 16.18 R-1.5 – Medium Density Residential Zone

Finding 5: The applicant is proposing to annex land and concurrently rezone the property consistent with the Comprehensive Plan designation. To the extent applicable, the new zoning has a variety of standards that apply to development and land divisions that will be proposed subsequent to this request for annexation. The amount of R-1.5 zoned land should this proposal be approximately ~ 2.9 acres refer to Figure 7 on the following page for an accounting of the acreage proposed for R-1.5 – Low Density Residential.

If this annexation zone change is approved, the properties will be subject to the standards found in CMC 16.18.

Figure 7 – Proposed Zoning District Overlays



3

3 Applicant's Provided Diagram; Not to Scale

16.08.150 Traffic Impact Study (TIS)

A. Determination based on information provided by the applicant about the proposed development, the city will determine when a TIS is required and will consider the following when making that determination.

- 1. Changes in land use designation, zoning designation, or development standard.**
- 2. Changes in use or intensity of use.**
- 3. Projected increase in trip generation.**
- 4. Potential impacts to residential areas and local streets.**
- 5. Potential impacts to priority pedestrian and bicycle routes, including, but not limited to school routes and multimodal street improvements identified in the TSP.**
- 6. Potential impacts to intersection level of service (LOS).**

CMC 16.54 — Amendments to the Zoning Map

16.54.010 Authorization to initiate amendments.

An amendment to the zoning map may be initiated by the City Council, by the Planning Commission, or by application of the property owner or his authorized agent. The Planning Commission shall, within forty days after closing the hearing, recommend to the City Council, approval, disapproval or modification of the proposed amendment. (Ord. 740 section 10.3.45 (A), 1984)

16.54.020 Application and fee.

Application procedures shall be as described in Chapter 16.89. (Ord. 740 section 10.3.85(B), 1984; Ord. 981 section 7, 1997; Ord. 1019 section 13, 1999; Ord. 1080, 2001)

16.54.030 Public hearing on amendment.

Before taking final action on a proposed amendment, the Planning Commission shall hold a public hearing on the amendment following the requirements for advertising and conduct of hearing prescribed in Division VIII. (Ord. 740 section 10.3.85(C), 1984)

Finding 6: The applicant provided an application and paid the appropriate fees. A public hearing will be held on October 11, 2021 and will meet all the requirements for advertising and conduct. Staff finds these criteria are met.

16.54.040 Standards and criteria.

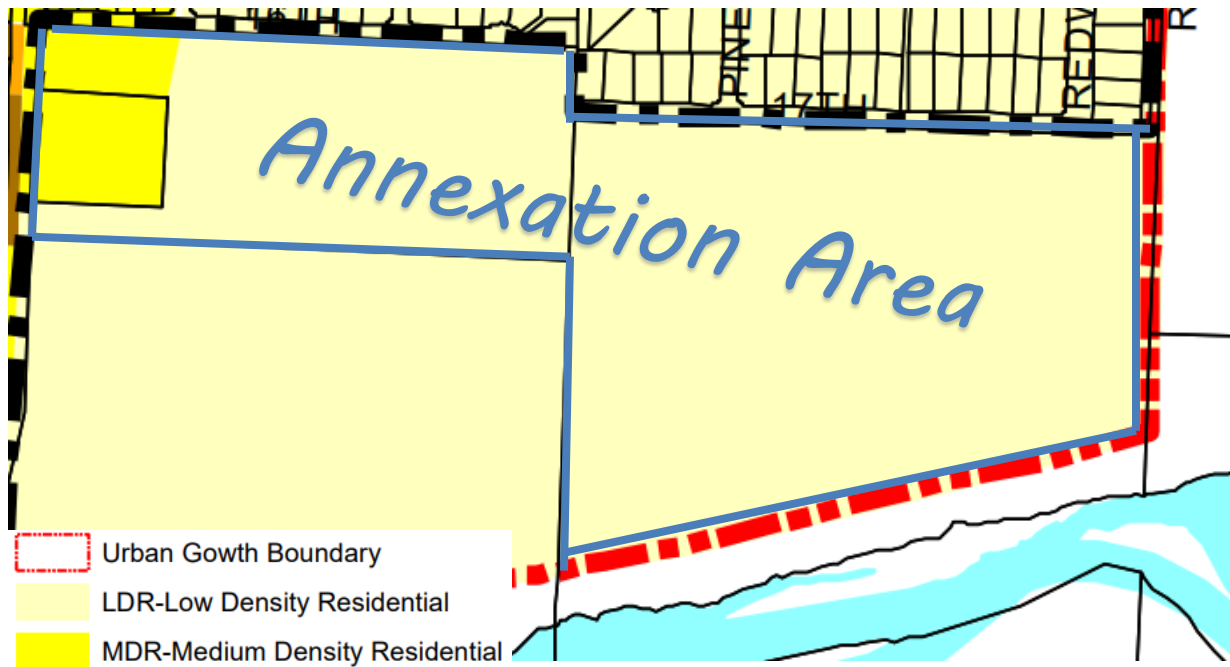
In judging whether or not the zoning map should be amended or changed, the Planning Commission and City Council shall consider the following criteria:

A. The Comprehensive Plan of the city, giving special attention to Policy 6 of the land use element and implementation measures therefore, and the plans and policies of the county, state and local districts in order to preserve functions and local aspects of land conservation and development;

Finding 7: The applicant is requesting a zone change from Clackamas County Exclusive Farm Use (EFU) to City of Canby R-1 and R-1.5. The proposed zoning map amendment is consistent with the underlying Comprehensive Plan map designations; see Figures 7 and 8 for images of the Comprehensive Plan map designations and proposed Zoning Map designations above for an image of the

Comprehensive Plan map. No changes are requested to the zoning map that are inconsistent with the underlying Comprehensive Plan designation; therefore, staff finds that a further analysis of impacts to county, state or other districts is not necessitated by the zone change.

Figure 8 – Subject Properties Comprehensive Plan Map Designation



B. Whether all required public facilities and services exist or will be provided concurrent with development to adequately meet the needs of any use or development which would be permitted by the new zoning designation. (Ord. 749 section 1(B), 1984; Ord.740 section 10.3.85(D), 1984; Ord. 1514, 2019)

Finding 8: Detailed discussion was made to these criteria above in the Development Concept Plan and Annexation sections of this staff report. Staff finds that the proposed zone change area will have or will be adequately provide for required public facilities and services. Further analysis will be conducted on the details of these provisions at a later date through a land division process.

16.54.60 Improvement conditions.

A. In acting on an application for a zone change, the Planning Commission may recommend and the City Council may impose conditions to be met by the proponents of the change before the proposed change takes effect. Such conditions shall be limited to improvements or physical changes to the property which are directly related to the health, safety or general welfare of those in the area. Further, such conditions shall be limited to improvements which clearly relate to and benefit the area of the proposed zone change. Allowable conditions of approval may include, but are not necessarily limited to:

- 1. Street and sidewalk construction or improvements;**

2. Extension of water, sewer, or other forms of utility lines;

3. Installation of fire hydrants.

B. The city will not use the imposition of improvement conditions as a means of preventing planned development, and will consider the potential impact of the costs or required improvements on needed housing. The Planning Commission and City Council will assure that the required improvements will not reduce housing densities below those anticipated in the Comprehensive Plan. (Ord. 749 section 1(C), 1984: Ord. 740 section 10.3.85 (F). 1984)

Finding 9: The Planning Commission should it choose to impose special conditions or restrictions on this zone change request may do so; however as stated above the imposition of such conditions should not have a material detriment on the costs or requirements for needed housing or reduce planned housing densities as envisioned in the Comprehensive Plan.

Canby Municipal Code (CMC) Section 16.84 Annexations

Consistent with Section 16.84 of the Canby Land Development and Planning Ordinance (the Ordinance), Chapter 16 of the Municipal Code, the proposed application qualifies as an Annexation, and is part of the City of Canby Annexation Development Map per Figure 16.84.040.

Section 16.84 of the Ordinance identifies the purpose and scope of annexations and sets forth regulations for annexing land into the City. Section 16.84 and specifically ORS 222.225 govern the application process for annexation and sets forth the standards and approval criteria for which the applicant must respond to in their narrative within their submitted application materials. Staff incorporates the applicant's written response as findings in support of the criteria. Additional facts and findings are provided herein.

CMC 16.84.020 – State Regulations.

The regulations and requirements of Oregon Revised Statutes Chapter 222 are adopted by reference and made a part of this division. (Ord. 740 section 10.6.20, 1984)

Finding 10: The State of Oregon passed Senate Bill 1573, effective March 15, 2017. The bill eliminated specific requirements for elections when processing annexations if specific criteria are met, specifically the annexation must demonstrate that:

1. It was submitted on behalf of all owners of land in the annexation territory;
2. The annexation territory must be included within the urban growth boundary of the city or Metro and is, or will be, subject to acknowledged comprehensive plan of city;
3. At least one parcel in the annexation territory must be contiguous to city limits; and
4. The proposal must conform to all other requirements of the city's ordinances.

Staff finds that the proposal meets the above criteria. The application contains a signed petition of owners of record in the application, is within the urban growth boundary, is subject to the comprehensive plan and has contiguous city limits with property to the north. As a condition of approval, the proposal shall meet all other requirements as stated in the city's development code and ordinances. Therefore, this annexation proposal may forego the elections proceedings stated in CMC 16.84.030.

CMC 16.84.030 – Filing Procedure.

Whenever an application for annexation is filed, it shall be reviewed in accordance with the following procedures:

A. Application Filing Deadlines. Application deadlines are established to permit public hearings by both the Planning Commission and the City Council in time to meet state and county requirements for submitting ballot information for these election dates. Application deadlines are as follows:

1. Regular annexation dates are in May and November. Annexations must be filed with the City before 5:00 p.m. on the last working day in August for a ballot election in May and the last working day in February for a ballot election in November. Incomplete applications may result in missing these planned election dates, at the City's discretion.
2. Annexations can be scheduled for a special election provided that all costs associated with the special election are covered by the applicant. Special elections will be scheduled by the City Council following the required City Council hearing on the application.

Finding 11: The above criteria are not applicable to this proposal. This annexation is not processed through an election proceeding.

B. Application Submittal. Application procedures shall be as described in Chapter 16.89, on forms provided by the Planning Department. (Ord. 899 section 6, 1993; Ord. 740 section 10.6.30, 1984; Ord. 981 section 36, 1997; Ord. 1019 section 18-20, 1999; Ord. 1080, 2001; Ord 1237, 2007; Ord. 1294, 2008)

Finding 12: Staff finds this criterion has been met; the application procedures and forms were completed as prescribed.

CMC 16.84.040 – Standards and criteria.

A. The following criteria shall apply to all annexation requests.

1. The City of Canby Annexation Development Map shall determine which properties are required to submit either (See Figure 16.84.040):

a. A Development Agreement (DA) binding for all properties located within the boundaries of a designated DA area as shown on the City of Canby Annexation Development Map. The terms of the Development Agreement may include, but are not limited to:

1. Timing of the submittal of an application for zoning
2. Dedication of land for future public facilities including park and open space land
3. Construction of public improvements
4. Waiver of compensation claims

5. Waiver of nexus or rough proportionality objections to future exactions

6. Other commitments deemed valuable to the City of Canby

For newly annexed properties that are within the boundaries of a DA area as designated on the City of Canby Annexation Development Map: A Development Agreement shall be recorded as a covenant running with the land, binding on the landowner's successors in interest prior to the City Council granting a change in zoning classification.

Finding 13: The proposed annexation area is not within an area designated as a Development Agreement (DA) area; this section is not applicable to the development.

b. A Development Concept Plan (DCP) binding for all properties located within the boundaries of a designated DCP area as shown on the City of Canby Annexation Development Map. A Development Concept Plan shall address City of Canby infrastructure requirements including:

Finding 14: The proposed annexation area is within the designated boundaries that mandate a Development Concept Plan (DCP) according to the Canby Annexation Development Map. Staff incorporates the applicant's materials herein by reference as part of the response to this request for adoption of the DCP. Staff address salient points where appropriate; the burden is on the applicant to demonstrate that this conceptual plan is sufficient for the Planning Commission and City Council to adopt. The following findings discuss the DCP generally and how it addresses the requirements stated in Items 1 through 8 below.

1. Water

Finding 15: Canby Utility is the sole provider of potable water in the City of Canby. Initial discussions with the utility have not indicated any potential concern for the availability and provision of potable water to the proposed annexation areas. The applicant has supplied a conceptual water infrastructure plan (**Exhibit B.2**) which demonstrates the general layout of proposed water infrastructure. The applicant has indicated that easements and other mechanisms could be utilized to facilitate the logical placement and construction of potable water conveying infrastructure. Staff finds that the applicant has sufficiently provided a conceptual framework for the provision of potable water to the proposed annexation area.

2. Sewer

Finding 16: The applicant states that the proposed annexation area will be able to accommodate sewer service through a gravity system flowing northward towards SE 16th and SE 17th Avenues. Staff note that the proposed gravity system would require significant fill to facilitate gravity flow. The conceptual plans demonstrate feet of fill to provide gravity feed towards the north. The applicant also indicated that there is the possibility to place sewer lines to convey sewage to the west to the Ivy Street pump station; however, because TL 2100 is not part of this development proposal, that option is limited. (Refer to **Exhibit B.3**) for a copy of the conceptual sewer diagrams.

Staff also have some concern that the placement of fill to facilitate gravity feed to the north would negatively impact TL 2100 and the ability to achieve that same gravity flow (now with increased backfill) in down slope areas. However, staff finds that the conceptual plan as proposed, demonstrates that the proposed annexation area can accommodate sewer infrastructure at the time of development. The

City's consulting engineer reviewed the project and while not ideal – the proposed conceptual arrangement of the public sewer system would suffice for this project. Refer to **Exhibit G** for comments related to the sewer from the City's consulting engineer.

3. Stormwater

Finding 17: The City of Canby provides some public stormwater infrastructure while much of the stormwater is managed on site across the City. The applicant is proposing to place private drywells consistent with City of Canby and Oregon Department of Environmental Quality (DEQ) standards. Excess water that traverses into the public right-of-way will be further collected by detention and infiltration dry wells. (Refer to **Exhibit B.4** for a copy of the conceptual stormwater plan). Staff finds that the proposed conceptual framework for stormwater can meet the needs of future development.

4. Access

Finding 18: The subject properties are proposed to take access via several public streets, including: S. Ivy St, SE 16th Ave and SE 17th Ave. The proposed conceptual layout appears to provide for adequate vehicle and pedestrian access as well as provide for emergency services to access the proposed annexation area from multiple ingress points. The logical continuation of existing public streets is an appropriate means to provide a variety of access points to the subject site. The 34-wide local streets will safely accommodate parking on both sides of the street and emergency vehicles according to correspondence between the applicant and the Canby Fire District. (Refer to **Exhibit B.1** for the conceptual access diagram).

5. Internal Circulation

Finding 19: The applicant's conceptual plan appears to demonstrate adequate internal circulation; additionally, the applicant has provide some conceptual 'shadow plat' diagrams that demonstrate how the subject properties would provide interconnection with TL 2100 (not part of this proposal). Future local streets internal to the development are proposed to contain a 44-foot ROW width with a typical cross section including a 5-foot planter strip, 7-foot parking area and 10-foot drive aisles. This local street section is consistent with City of Canby standards and will adequately provide internal site circulation.

6. Street Standards

Finding 20: As mentioned above in Findings 18 and 19; the proposed conceptual plans adequately address the access and internal circulation as it relates to consideration for a proposed annexation into the city boundaries. As part of any future development (subdivision of annexed land) the developer will be required to construct public and private roads to City standards. These standards will be reviewed and verified by a combination of Planning, Public Works staff with consult from the City's contracted engineering team.

7. Fire Department Requirements

Finding 21: The applicant has indicated that the proposed layout will adequately accommodate fire and other emergency operations. The proposed local streets are adequate for fire apparatus access and fire hydrants will be placed no longer than 300 feet apart. Further discussion and fine detail analysis of

fire suppression requirements are typically part of the subdivision and pre-construction processes. To the extent appropriate at this conceptual level, staff finds that the applicant has demonstrated consistency with Canby Fire District requirements.

8. Parks and Open Space

Finding 22: The applicant has demonstrated on a conceptual level the inclusion of a segment of the Emerald Necklace Trail which is an important long range planning effort the City will require as a dedication component of any future development. The applicant has supplied some approximate analysis on potential park land dedication as a requirement of the subdivision process.

The applicant has supplied calculations based on assumptions of a future subdivision, Refer to Figure 7 on the following page.

Figure 7 – Applicant’s Calculations of Anticipated Park Land Dedication

The future Tofte annexation site anticipates providing approximately ±160 units intended for single-family detached homes. Therefore, as calculated below, a minimum of ±4.3 acres (±9 percent of gross area) of open space, including a neighborhood park is anticipated to be required for dedication, as well as, owned and maintained by the future Tofte Homeowner’s Association (HOA). A conceptual open space plan is shown on the DCP (Exhibit B).

TL 1200, 1300, and 2300 – Calculation of Anticipated Park Land Dedication
(160 lots) x (2.7 persons/unit) x (0.01) = ±4.3-acre minimum dedication

Finding 23: Pursuant to Canby Municipal Code 16.120, the applicant has demonstrated that the required park land dedication is approximately ~ 4.3 acres of land. Additionally, CMC 16.120 provides significant guidance and requirements as they relate to the acceptance of parkland and open space. Much of this analysis and the dedication of parkland is typically conducted at the land division phase. However, staff finds that the applicant has the ability to dedicate and/or pay cash in lieu fees in order to satisfy the parkland dedication requirements stated in the code.

2. Analysis of the need for additional property within the city limits shall be provided. The analysis shall include the amount of developable land (within the same class of zoning - low density residential, light industrial, etc.) Currently within the city limits; the approximate rate of development of those lands; and how the proposed annexation will affect the supply of developable land within the city limits. A supply of developable residential land to provide for the anticipated population growth over the following three years is considered to be sufficient.

Finding 24: The applicant has provided an analysis with data based assumptions detailing:

- Inventory of low and medium density residential land.
- Approximately rate of development or consumption of vacant or underutilized land.
- The proposed annexation’s impact on the inventory and consumption of land within the three year forecast range as stated above.

Staff incorporate that analysis and the applicant’s findings by herein by reference (Refer to Exhibit B).

Finding 25: The City of Canby conducted a Housing Needs Analysis (HNA) which was presented to

City Council in 2019. While not formally adopted at that time, it was acknowledged by the Council and provided an exploration of the City's housing inventory and needs over a 20-year planning period to 2039. The HNA was completed largely to recognize requirements dictated by Statewide Planning Goal 10: Housing. The HNA was also compiled to anticipate/adapt to future changes at the state level which would require municipalities to adjust their methods and policies to adequately account for the buildable lands inventory (BLI) among other requirements. The applicant has used much of the information found in that analysis with additional supporting documentation to demonstrate the amount of buildable land in the city, the city's needed supply and the impact this project has on those factors.

Staff note that the current inventory and the anticipated demand for housing is based on a number of factors which are typically outside of the city or the applicant's purview; among these are: market factors and conditions, general local, regional, national and global economy. These variable can affect the housing demand and impact changes in the inventory over time. Regardless of external factors the applicant presents a reasonable analysis that the Tofte South annexation would reasonably contribute a housing shortfall in the City of Canby.

Figure 8 – Applicant's Calculations for 3-Year Inventory for SFD Detached Units

City of Canby Available/Potential Lots for Single-Family Detached Dwellings	
Unimproved Lots Under 6 Acres	±191 lots
Unimproved Lots Over 6 Acres	±6 lots
Redevelopment Potential of Properties Greater than 6 Acres	±269 lots
Existing Capacity	±460 lots
Tofte Annexation	±80 lots (Phase 1)
Future Capacity	±540 lots
Units Necessary for 3-year Planning Period	±576
Note: The Tofte Annexation could provide ±160 units over multiple phases. As such, only ±80 units are shown above to demonstrate a practical number, as Pahlisch Homes does not plan to accommodate all ±160 homes in one phase/year.	

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Finding 26: Staff finds that the applicant has sufficiently demonstrated with conservative estimates that the City Canby will have a deficit in SFD detached units and that this project will add to the supply over the 3-year and 20-year planning timeframes.

3. Statement of potential physical, aesthetic and related social effects of the proposed development on the community as a whole and on the neighborhood of which it will become a part; and proposed actions to mitigate identified concerns, if any. A neighborhood meeting is required as per Table 16.89.020 of the City of Canby Land Development and Planning Ordinance.

Finding 27: The applicant has supplied a general statement regarding the potential impacts to physical, aesthetic and social attributes. The applicant states and staff concur that the surrounding areas

4 Applicant's calculations; partially derived from 2019 HNA compiled by City Planning Staff

is comprised of predominantly single family homes of a fairly homogenous composition. The applicant is seeking to annex land for future development in which a similar character of neighborhood would be planned and constructed. Aesthetics are entirely subjective; however, staff cannot find any significant flaws in the proposed concept plan at this point in the process that would raise concerns related to aesthetics and/or social effects.

Finding 28: Physical impacts are not discussed in detail by the applicant; however, the applicant does demonstrate that the proposed annexation will allow for logical continuation of public streets and neighborhood composition. Of note to staff, is the area near the Mollala River which includes a riparian buffer area, some mapped floodplain/floodway according to FIRM data and some potential geologic instability as indicated in public comments and field observations. At this time, these areas are identified as potential dedication and/or easement areas in which the only significant development is a linear trail – likely outside of any conflict with these features. The applicant has supplied a wetland report conducted by their staff as well as a preliminary geotechnical analysis which can be described as a statement of physical components of the property. Staff find that the applicant has made a good faith effort to accurately describe the physical conditions on the site and present some of the challenges or constraints potentially found with the areas in close proximity to the Mollala River. Refer to **Exhibit B.5** for a copy of a wetland report conducted by the applicant team.

Finding 29: The applicant conducted a neighborhood meeting on May 25, 2021 at 6pm consistent with the code requirement stated in CMC 16.89.020.

4. Statement of availability, capacity and status of existing water, sewer, drainage, transportation, park and school facilities;

Finding 30: Staff note that much of this information is discussed in Findings 15 through 20 above and in the applicant's submitted narrative and accompanying exhibits found in their submittals. The applicant as required requested that the City's traffic engineering consultant provide a TPR memorandum which satisfies state law and rule regarding the annexation and zone change.

Finding 31: The applicant indicates in the submitted narrative that all required services are available to adequately provide for the future development of the subject property. Existing sewer, water, power and other utility infrastructure will be extended as appropriate to accommodate the annexation area. This infrastructure is currently capable of providing service to the future development of the proposed annexation area.

Finding 32: The subject parcel is in a Development Concept Plan (DCP) Area of the Canby Annexation Development Map. The applicant is aware of the obligation to provide dedications for future public facilities and the construction of streets and water and sewer lines as well as other related development. The DCP demonstrates how utility infrastructure will be made available, and unmanageable capacity issues were not identified by City departments and agencies during this review process. Staff finds these criteria can be further addressed and met at the time of development.

5. Statement of increased demand for such facilities to be generated by the proposed development, if any, at this time;

Finding 33: Any evaluation of impacts and demand to public facilities will be conducted at a later date during a development proposal. This process is an annexation and zone change and is not

characterized as development.

6. Statement of additional facilities, if any, required to meet the increased demand and any proposed phasing of such facilities in accordance with projected demand;

Finding 34: The applicant is considering phasing of the project; however, much of this review will occur during a proposal for a subdivision. No other facilities have been identified as needed to accommodate demand as a result of the proposed annexation and zone change.

7. Statement outlining method and source of financing required to provide additional facilities, if any;

Finding 35: The applicant will pay the necessary costs of their own development. No identified facilities are necessitated as part of the annexation proposal. Any facilities and infrastructure improvements necessitated will be addressed upon future development proposals.

8. Statement indicating the type and nature of any Comprehensive Plan text or map amendments or Zoning text or map amendments that may be required to complete the proposed development. Proposed zoning must be consistent with zoning identified in any applicable adopted Development Concept Plan. (Ord. 1292, 2008; Ord. 1422, 2015)

Finding 36: Should this proposal gain approval, a zone change from Clackamas County Exclusive Farm Use (EFU) to a mixture of City of Canby Low and Medium Density Residential (R-1 and R-1.5) is requested concurrently as part of this process. The applicant intends to follow the Low and Medium Density residential zoning designation of the Comprehensive Plan. The proposed change is a zoning map amendment to change the zone from Clackamas County zoning to the designated Comprehensive Plan envisioned zoning (a mixture of R-1 and R-1.5). The Zone Map Change Application that accompanies this annexation request will satisfy the Development Concept Plan designations. Staff finds that the criterion in 16.84.040(A)(8) can be met.

9. Compliance with other applicable city ordinances or policies;

Finding 37: According to the applicant's submittal and City of Canby ordinances and policies, staff finds that this proposal is in compliance with applicable regulations as conditioned. Additional analysis and conditions will be conducted as appropriate in future development proposals.

10. Compliance of the application with the applicable sections of Oregon Revised Statutes Chapter 222. (Ord. 740 section 10.6.40, 1984; Ord. 981 section 37, 1997; Ord. 1294, 2008)

Finding 38: As stated above in Finding 1, the State of Oregon passed Senate Bill 1573, effective March 15, 2017. The bill eliminated specific requirements for election requirements when processing annexations if specific criteria are met, specifically the annexation must demonstrate that:

1. Shall be submitted by all owners of land in the annexation territory;
2. The annexation territory must be included within the urban growth boundary of the city or Metro and is, or will be, subject to acknowledged comprehensive plan of city;
3. At least one parcel in the annexation territory must be contiguous to city limits; and
4. The proposal must conform to all other requirements of the city's ordinances.

Finding 39: Staff finds that the proposal meets the above criteria. The application contains a signed

petition of owners of record in the application, is within the urban growth boundary, is subject to the Comprehensive Plan and has contiguous city limits with property to the north. As a condition of approval, the proposal shall meet all other requirements as stated in the city's development code and ordinances. Therefore, this annexation proposal may forego the elections proceedings stated in CMC 16.84.030. Staff finds that the applicant has met the applicable standards of ORS Chapter 222.

CMC 16.89.060 – Application and Review Procedures

16.89.060 Type IV Decision

For certain applications, the City Council makes a final decision after a recommendation by the Planning Commission. These application types are referred to as Type IV decisions.

- A. Pre-application conference. A pre-application conference may be required by the Planning Director for Type IV applications.**

Finding 40: A preapplication conference was held on April 19, 2021.

- B. Neighborhood meetings. The applicant may be required to present their development proposal at a neighborhood meeting (see Section 16.89.070). Table 16.89.020 sets the minimum guidelines for neighborhood review but the Planning Director may require other applications to go through neighborhood review as well.**

Finding 41: A neighborhood meeting consistent with the above standards was held by the applicant on May 25, 2021.

- C. Application requirements. Type IV applications shall be made on forms provided by the Planning Director. The application shall be accompanied by all required information and fees.**
- D. Public notice and hearings. The public notice and hearings process for the Planning Commission's review of Type IV applications shall follow that for Type III applications, as provided in subsections 16.89.050.D and 16.89.050.E.**

Finding 42: The standards for application requirements and public noticing are met.

- E. Decision process.**
 - 1. Approval or denial of a Type IV decision shall be based on the standards and criteria located in the code.**
 - 2. The hearings body shall issue a final written order containing findings and conclusions recommending that the City Council approve, approve with conditions, or deny the application.**

3. The written decision shall explain the relevant criteria and standards, state the facts relied upon in rendering the decision, and justify the decision according to the criteria, standards, and facts.

4. In cases involving attorneys, the prevailing attorney shall prepare the findings, conclusions, and final order. Staff shall review and, if necessary, revise, these materials prior to submittal to the hearings body.

F. City Council proceedings:

1. Upon receipt of the record of the Planning Commission proceedings, and the recommendation of the Commission, the City Council shall conduct a review of that record and shall vote to approve, approve with conditions, or deny the recommendation of the Planning Commission.

2. The City Council may question those individuals who are a party to the public hearing conducted by the Planning Commission were if the Commission's record appears to be lacking sufficient information to allow for a decision by the Council. The Council shall hear arguments based solely on the record of the Commission.

3. The City Council may choose to conduct public hearings on Comprehensive Plan amendments, amendments to the text of this title, zone map amendments, and annexations. If the Council elects to conduct such hearings, it may do so in joint session with the Planning Commission or after receiving the written record of the Commission. (Ord. 1080, 2001)

Finding 43: Annexations are processed as a Type IV "quasi-judicial" process which is considered through a public hearing at the Planning Commission that forwards a recommendation to the City Council. The City Council also holds a public hearing and issues a final decision. The notice requirements are the same as for Type III applications.

In this particular case, the annexation request will not be scheduled for a public vote. On March 15, 2016, the Governor signed Senate Bill SB 1573 that mandates some properties, meeting certain criteria, to file for annexation without going through a public vote process that might otherwise currently be in effect through local City Charter provisions and adopted code. This application meets the criteria stated in SB1573, and a public vote will not be held for this annexation application.

Notice of this application and the Planning Commission and Council Hearing dates was made to surrounding property owners on September 20, 2021 at least 20-days prior to the hearing. Prior notification and neighborhood meetings were completed during the application process. The site was posted with a Public Hearing Notice sign on September 28, 2021. Notice meeting ordinance requirements of the public hearings was published in the Canby Herald on October 6, 2021. The pre-application conference was held on April 19, 2021. These findings indicate that all processing requirements have been satisfied with this application to date.

IV. Public Testimony Received

Notice of this application and opportunity to provide comment was mailed to owners of lots within 500 feet of the subject properties and to all applicable public agencies and City departments on July 1, 2020. Complete comments are documented in the file. As of the date of this Staff Report, the following comments were received by City of Canby from the following persons/agencies:

Public Comments (Refer to Exhibit G for copies of exact comments):

- Fair Housing Council
- Patricia Swanson
- Brian Hutchins
- Dorothy Kniser
- Randy and Wendy Watson

Agency Comments (Refer to Exhibit H for copies of agency comments):

- City Engineer

V. Summary of Public Comments

Below is a summary of comments received by staff at the date of this staff report's submittal. A brief response by staff is included after each comment.

- Fair Housing Council: These comments are related to the desire to see the City's findings related to Statewide Planning Goal 10: Housing.

Staff Response: This application is not for a Comprehensive Plan amendment and does not propose any changes related to the acknowledged Comprehensive Plan. Goal 10 findings are not necessary at this stage. The proposal for annexation/zone change is to bring land into the city to develop consistent with what the DLCD acknowledged Comprehensive Plan envisioned for this area. This project does not involve a *downzone or upzone* or modifications to the underlying Comprehensive Plan map designations.

- Patricia Swanson: Concerns about traffic flow and access. Mentions concerns about multifamily development.

Staff Response: Traffic will be thoroughly analyzed as part of a future subdivision proposal. At the conceptual phase for annexation, the proposed access is appropriate. A Transportation Planning Rule (TPR) memorandum was prepared by DKS, a traffic engineering and planning firm who found that the proposed annexation is consistent with the TPR and Oregon Administrative Rule requirements for zone changes.

- Brian Hutchins: Wants SE 16th Ave to be widened. Expressed interest in widening and extending other streets.

Staff Response: A future subdivision would require development of the remainder of SE 16th Avenue as a condition of approval. This would address the widening of this street.

- Dorothy Kniser: Wants SE 16th Avenue to not be used for construction traffic at any time. Expressed concerns about impacts to approach onto S Ivy and how that will effect fire and other emergency services. Wants the City of Canby to consider installing speed bumps on SE

16th Ave as part of this proposal.

Staff Response: A future subdivision would require development of the remainder of SE 16th Avenue as a condition of approval. This would address the widening of this street.

- Randy and Wendy Watson: These comments are related to access on SE 16th Ave, construction impacts to access. Concerns about dust fugitives as part of development. Request for roundabout to be constructed prior to development. Concerns about the requirements for street trees.

Staff Response: This is a proposal for annexation and zone change. No physical changes to the subject properties are proposed at this time. The conceptual street network as proposed is a logical continuation of development. Impacts from construction are required to be mitigated through subdivision and construction plan approval process.

The City cannot require the roundabout to be constructed by the applicant; there is not a sufficient nexus and rough proportionality finding.

VI. Conclusion Regarding Consistency with the Standards of the Canby Municipal Code

Staff concludes, as detailed in the submittal from the applicant and as indicated here in this staff report, including all attachments hereto, that:

1. The applications and proposed use is in conformance with applicable sections of the City's Comprehensive Plan and Land Development and Planning Ordinance when the determinations contained in this staff report are applied.
2. The proposed annexation can meet the approval criteria set forth in CMC 16.84.040.A.
3. The zoning of the property, if annexed, shall be R-1 and R-1.5 as indicated in the application and pursuant to the approval criteria set forth for map amendments in CMC 16.54.040.
4. The proposed annexation's requested zoning district of R-1 and R-1.5 is in conformance with the Comprehensive Plan Land Use Plan Map.
5. The application complies with all applicable Oregon Revised Statutes.
6. There are sufficient public and private agency utility and service capacity to serve the site at the anticipated development intensity.
7. In accordance with the UGMA with Clackamas County, this proposed annexation application includes a description of the adjacent S Ivy Street right-of-way with the properties proposed for annexation.

VII. Recommendation to Planning Commission: ANN 20-01/ZC 20-02

Based on the application submitted and the facts, findings and conclusions of this report, but without benefit of a public hearing, staff recommends that the Planning Commission recommend to the City

Council that:

1. The Planning Commission move to recommend ANN 20-01/ZC 20-02 for approval to the City Council;
2. The Planning Commission move to recommend a change in the zoning of the subject property from Clackamas County EFU to City of Canby R-1 and R-1.5 as indicated by the Canby Comprehensive Plan map.

The planning Commission move to attach the following conditions to this recommendation of approval:

1. Annexation (ANN 20-01) and Zone Change (ZC 20-02) must be free of appeals and final land use decisions as defined by ORS 197.015 prior to any subdivision gaining approval.
2. Annexation approval shall conform to all other applicable City of Canby ordinances, municipal code, state law and administrative rule.